Gitalaxmi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2542 OF 2025

Hayaansh Opticals Pvt. Ltd. … Petitioner
V/s.
The Special Recovery and Sales Officer & Ors. … Respondents

Mr. Priyansh R. Jain, Adv. for the Petitioner.

Mr. Sanjay D. Rayrikar, A.G.P. for the State-Respondent Nos. 2 & 4.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 21, 2025

P.C.:

1. The Petitioner has invoked the extraordinary jurisdiction of this Court to challenge the validity and enforceability of a certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"). The principal contention advanced on behalf of the Petitioner is that, having been a successful Resolution Applicant under a Resolution Plan approved by the National Company Law Tribunal ("NCLT") in proceedings under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "the IBC"), the Petitioner is not liable to pay any amount to the Co-operative Housing Society, in whose favour the said certificate has been granted. According to the Petitioner, no recovery can be made in respect of any debt or dues that are not expressly provided for in the approved Resolution Plan, as the approval of the Plan by the NCLT operates as a binding order on all creditors and stakeholders, extinguishing any outstanding claims not included therein.

2. In support of this proposition, learned counsel for the Petitioner has placed reliance on the principle laid down by the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, 2021 SCC OnLine SC 313, wherein it was affirmed that once a Resolution Plan is approved by the Adjudicating Authority under Section 31 of the IBC, it is binding on the corporate debtor and its creditors. It was further held that all claims not reflected in the Resolution Plan stand extinguished. The Petitioner, therefore, contends that the certificate under Section 101 of the Act cannot be enforced against it.

3. However, a plain reading of Section 31 of the IBC and the aforementioned decision indicates that while the Resolution Plan approved by the NCLT is undoubtedly binding on the creditors, the question of whether a particular claim or liability is subsumed within the scope of the Plan hinges upon the manner in which the claim was disclosed, admitted, or dealt with during the corporate insolvency resolution process. The Petitioner's assertion that the entire claim of the Co-operative Housing Society is non-recoverable simply on the basis that it was not expressly provided for in the Resolution Plan may require detailed fact-finding. Such an inquiry is not ordinarily embarked upon within the limited scope of writ jurisdiction when there exists an alternative statutory remedy.

4. It is next contended on behalf of the Respondents that even if the Petitioner disputes the enforceability of the certificate under Section 101 of the Act, the proper recourse available to the Petitioner is to file a revision under Section 154 of the Act. Section 154 confers revisional power on the appropriate authority to examine the legality, propriety, and correctness of any proceedings conducted under the Act, which would include the issuance of a certificate under Section 101.

5. It is well established, as observed by this Court and the Hon'ble Supreme Court in various pronouncements, that where a statutory remedy of revision is available, a writ petition should ordinarily not be entertained unless exceptional circumstances are shown. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433, the Hon'ble Supreme Court reiterated that parties must first exhaust the statutory remedies provided under the relevant enactment before invoking the writ jurisdiction of the High Court.

6. In the present context, the revisional remedy under Section 154 of the Act is comprehensive and enables the Revisional Authority to entertain all questions of law and fact regarding the validity of the certificate issued under Section 101 of the Act. The Petitioner, therefore, has an efficacious opportunity to raise every ground of challenge, including the defence that the subject debt stands extinguished under the approved Resolution Plan. This Court finds no compelling reason to bypass such a statutory remedy, particularly when the same is of right and all-encompassing.

7. Furthermore, the question touching upon the claim or objection in respect of attachment of property can also be raised before the Special Recovery Officer under Rule 107(19)(a) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter "the MCS Rules"). The said rule provides a specific mechanism to address objections concerning the manner of execution or the underlying enforceability of the recovery certificate.

8. It has been judicially recognised that where the law prescribes a particular forum or authority to decide questions related to execution, discharge, or satisfaction of an order or certificate, parties are obliged to first approach that forum. Adherence to procedural framework under the MCS Rules ensures that disputes are addressed systematically, with due opportunity to all interested parties. This rule-based procedure, therefore, vests an additional statutory safeguard in favour of the Petitioner, affording it the liberty to raise all contentions relating to the legal or factual sustainability of the certificate during the execution stage. This multi-layered statutory scheme reflects the legislative intent to provide comprehensive remedies within the Act and the Rules, obviating the necessity for a direct invocation of the writ jurisdiction in most cases.

9. In light of the foregoing, and upon due consideration of the submissions advanced, this Court is of the considered view that the proper recourse for the Petitioner lies in exhausting the statutory remedies available under Section 154 of the Act by way of revision, and, as may be necessary, invoking Rule 107(19)(a) of the MCS Rules before the Special Recovery Officer in relation to any claim in respect of attachment of property. The grievance raised herein regarding the purported extinguishment of the debt under the approved Resolution Plan can be adequately adjudicated by the concerned Revisional Authority empowered to examine the Petitioner's contentions on merits.

10. Consequently, the present Petition stands **dismissed**, with liberty granted to the Petitioner to avail the remedies of (i) filing a Revision under Section 154 of the Act and/or (ii) challenging the attachment of property in furtherance of the certificate under Rule 107(19)(a) of the MCS Rules, in accordance with law. No opinion is expressed on the merits of the Petitioner's claims. If such remedies are availed, the concerned forum shall decide the same strictly on merits and in accordance with law.

11. Thus, for the reasons stated herein, the Petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)